



## The Attorney General of Texas

April 15, 1985

JIM MATTOX  
Attorney General

Supreme Court Building  
P. O. Box 12548  
Austin, TX. 78711-2548  
512/475-2501  
Telex 910/874-1367  
Telecopier 512/475-0266

714 Jackson, Suite 700  
Dallas, TX. 75202-4506  
214/742-8944

4824 Alberta Ave., Suite 160  
El Paso, TX. 79905-2793  
915/533-3484

1001 Texas, Suite 700  
Houston, TX. 77002-3111  
713/223-5886

806 Broadway, Suite 312  
Lubbock, TX. 79401-3479  
806/747-5238

4309 N. Tenth, Suite B  
McAllen, TX. 78501-1685  
512/682-4547

200 Main Plaza, Suite 400  
San Antonio, TX. 78205-2797  
512/225-4191

An Equal Opportunity/  
Affirmative Action Employer

Honorable Kathryn J. Whitmire  
Mayor  
City of Houston  
P. O. Box 1562  
Houston, Texas 77251

Open Records Decision No. 427

Re: Whether a police academy is  
an educational institution under  
section 3(a)(14) of the Open  
Records Act, article 6252-17a,  
V.T.C.S.

Dear Ms. Whitmire:

A newspaper reporter has asked the city of Houston for

access to two letters apparently written by [a  
named Captain] on, about April 27 or 28 [1984],  
concerning the academy status of two [named]  
Police Department academy recruits.

You argue that sections 3(a)(2) and 3(a)(14) of the Open Records Act,  
article 6252-17a, V.T.C.S., authorize the city to deny this request.

Section 3(a)(14) generally excepts from required disclosure  
"student records at educational institutions funded wholly, or in  
part, by state revenue." Section 14(e) of the act further provides  
that

[n]othing in this Act shall be construed to  
require the release of information contained in  
education records of any educational agency or  
institution except in conformity with the  
provisions of the Family Educational Rights and  
Privacy Act of 1974 [hereinafter 'the Buckley  
Amendment'], as enacted by Section 513 of Public  
Law 93-380, codified as Title 20 U.S.C.A. Section  
1232g, as amended.

You claim that these sections embrace the two letters in question  
because

[b]oth these letters were written concerning these  
officers' progress as students at the Police  
Academy for the city of Houston and are part of  
their student records as well as their personnel  
file. The Police Academy is an extension of

Houston Community College and Sam Houston State University, both of which receive state funds. Once cadets complete their academy training, they have 18 hours of college credit with Houston Community College.

We presume that both institutions are recipients of federal funds. We have examined the letters in question. Both contain information concerning the performance of the two police cadets in qualifying tests administered at the Police Academy. If the Police Academy is an "educational institution," then these letters would constitute the kind of "education records" that may be released only in accordance with the provisions of the Buckley Amendment and the Open Records Act. See 20 U.S.C. §1232g(a)(4)(A) (1982) (definition of "education records"); subsection (a)(6) (definition of "student"); subsection (b)(1) (prohibiting release of "education records (or personally identifiable information . . .) of students without . . . written consent . . . other than to [certain named parties]"); see also, e.g., Open Records Decision No. 294 (1981) (indicating the kind of records held to be within student records exception of Open Records Act). The only question is whether these letters are education records of any "educational agency or institution" within the meaning of the Open Records Act.

The Open Records Act does not define "educational institution," section 3(a)(14), or "educational agency or institution," section 14(e). Moreover, the Buckley Amendment sheds no light on the meaning of these terms; it merely states that an "educational agency or institution" is "any public or private agency or institution which is the recipient of funds under any applicable program." 20 U.S.C. §1232g(a)(1)(C)(3) (1982). Because these terms are not defined in the applicable statutes, they must be given their ordinary and popular meaning. See, e.g., Sanford v. State, 492 S.W.2d 581 (Tex. Crim. App. 1973).

We have examined several cases in which the meaning of "education" and "educational institution" is at issue. Almost without exception these cases define "education" expansively. See, e.g., Girard School District v. Pittenger, 392 A.2d 261, 264 (Pa. 1978) ("education" is impartation or acquisition of knowledge, skill or discipline of character); Harbor Schools, Inc. v. Board of Appeals of Haverhill, 366 N.E.2d 764, 767 (Mass. App. 1977) ("education" a broad, comprehensive term involving process of developing and training mental, moral, or physical powers and faculties). They also establish that in deciding whether an institution is an "educational institution" courts will ask, among other things, whether education is the primary function of the institution. See, e.g., LaManna v. Electrical Workers Local Union No. 474 of International Brotherhood of Electrical Workers, AFL-CIO, 518 S.W.2d 348 (Tenn. 1974) (where union's educational services incidental, union not an "educational institution" entitled to property tax exemption); Melcancon v. State Board of

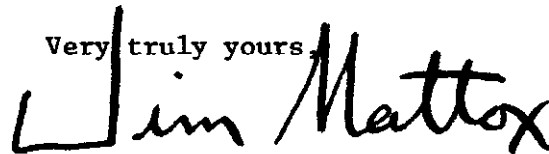
Education, 195 So.2d 289 (La. 1967) ("educational institution," within meaning of state constitution, is permanent, state-controlled establishment located on state property and sustained by state appropriations to provide education through staff of professionally trained educators); Birmingham Business College v. Whetstone, 82 So.2d 539 (Ala. 1955) (business college, which offered courses in business law, accounting and secretarial capacities, was "educational institution" within meaning of state constitution and laws).

Based on this array of cases decided in a similar manner by courts throughout the country, we conclude that a Texas court faced with the question of whether the city of Houston Police Academy is an "educational institution" within the meaning of the Open Records Act would answer in the affirmative. The exclusive purpose of the academy is to provide the training and skills necessary to be an effective and competent police officer. The academy is an extension of both a community college and a state university. It receives state funds. Cadets who complete its training course receive 18 hours of college credit. In light of these facts, we conclude that the academy offers "education" and that it is an "educational institution" as these terms are ordinarily and popularly understood.

For these reasons we conclude that the letters at issue in this instance constitute "education records of [an] educational agency or institution" within the meaning of section 14(e) of the Open Records Act and "student records at [an] educational [institution] funded wholly, or in part, by state revenue" within the meaning of section 3(a)(14) of the act. As such, they may be disclosed only in accordance with the provisions of the Buckley Amendment and the Open Records Act. Neither act permits the disclosure of these letters in this instance, unless the subjects of the letters consent to their release. 20 U.S.C. §1232g(b)(1) (1982). We understand that no such consent has been given.

Because we have resolved your question on the basis of sections 3(a)(14) and 14(e) of the Open Records Act, we do not address your section 3(a)(2) claim.

Very truly yours,

A handwritten signature in black ink that reads "Jim Mattox". The signature is written in a cursive, slightly slanted style. The first letter "J" is large and loops around the "i". The last letter "x" has a long, horizontal tail.

J I M M A T T O X  
Attorney General of Texas

TOM GREEN  
First Assistant Attorney General

DAVID R. RICHARDS  
Executive Assistant Attorney General

RICK GILPIN  
Chairman, Opinion Committee

Prepared by Jon Bible  
Assistant Attorney General

APPROVED:  
OPINION COMMITTEE

Rick Gilpin, Chairman  
Jon Bible  
Colin Carl  
Susan Garrison  
Tony Guillory  
Jim Moellinger  
Jennifer Riggs  
Nancy Sutton